

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

FRANCES MCCARTY,)
v. Plaintiff,)
NANCY A. BERRYHILL,) Case No. CIV-16-151-SPS
Acting Commissioner of the Social)
Security Administration,¹)
Defendant.)

**OPINION AND ORDER AWARDING
ATTORNEY'S FEES TO THE PLAINTIFF UNDER THE EAJA**

Plaintiff Frances McCarty was the prevailing party in this action under the Social Security Act. Plaintiff originally sought an award of attorney's fees in the amount of \$4,673.60, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). *See* Docket No. 24. The Commissioner subsequently filed a response, indicating that the parties had agreed to an award of attorney's fees in the amount of \$4,250.00. *See* Docket No. 25.

Upon review of the record herein, the Court finds that the agreed amount is reasonable and that the Commissioner should be ordered to pay it to the Plaintiff as the prevailing party herein. *See* 28 U.S.C. § 2412(d)(1)(A) (“Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a),

¹ On January 23, 2017, Nancy A. Berryhill became the Acting Commissioner of Social Security. In accordance with Fed. R. Civ. P. 25(d), Ms. Berryhill is substituted for Carolyn Colvin as the Defendant in this action.

incurred by that party in any civil action (other than cases sounding in tort)[.]"); *see also Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) ("The EAJA therefore permits attorney's fees reimbursement to financially eligible prevailing parties, who make a proper application, and not to their attorneys.").

Accordingly, IT IS ORDERED that the Plaintiff's Motion and Brief in Support for an Award of Attorney's Fees Under the Equal Access to Justice Act 28 U.S.C. § 2412 [Docket No. 24] is hereby GRANTED IN PART, to the extent that the Government is ordered to pay the agreed-upon \$4,250.00 fee award to the Plaintiff as the prevailing party herein. IT IS FURTHER ORDERED that if the Plaintiff's attorney is subsequently awarded any fees pursuant to 42 U.S.C. § 406(b)(1), said attorney shall refund the smaller amount of such fees to the Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

DATED this 17th day of January, 2018.



Steven P. Shreder
United States Magistrate Judge
Eastern District of Oklahoma